

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: ANTHONY HERMAN dba Mighty Good Used Cars; Polk County, Iowa.	ADMINISTRATIVE ORDER NO. 2008-WW-03
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TO: Anthony Herman
P.O. Box 17
Polk City IA 50226

I. SUMMARY

This Administrative Order (Order) is issued to Anthony Herman, doing business as Mighty Good Used Cars, (Mr. Herman) in order to resolve violations at a business located in Polk City, Iowa.

Pursuant to this Order, Mr. Herman is hereby ordered to:

1. By March 1, 2008, revise the facility's pollution prevention plan to prevent the further discharge of contaminants;
2. By April 1, 2008, implement the revised pollution prevention plan, and
3. Pay an administrative penalty in the amount of \$7,500.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gibbons
IDNR Field Office #5
401 SW 7th Street, Ste. I
Des Moines, IA 50309
Ph: 515-725-0268

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1 (water quality), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Mr. Herman operates three automotive-related businesses in Polk City, Iowa. Mighty Good Used Cars is located at 300 Sandpiper Court. Mighty Good Quick Lube and Mighty Good Car Wash are located at 301 Sandpiper Court. As a part of the operation of Mighty Good Used Cars, junk vehicles are processed to be sold as scrap. The property is located in the vicinity of Saylorville Reservoir, a federal impoundment.

2. On November 17, 2006, the Department received a complaint raising concerns about the possible discharge of contaminated storm water from Mr. Herman's properties. The complaint indicated that auto salvaging was occurring at the site.

3. On November 29, 2006, the Department received a complaint alleging that Mr. Herman was dumping oil, gasoline and antifreeze on the ground and down the sanitary sewer at his business.

4. On December 1, 2006, the Department conducted an investigation at Mr. Herman's businesses. It was observed that Mighty Good Used Cars was conducting salvage operations on junk vehicles at the property at 300 Sandpiper Court, Polk City. Some evidence of spilled gasoline or motor oil was observed on the site. Four lead-acid batteries were observed sitting outside on the ground.

5. On December 6, 2006, Environmental Specialist Bill Gibbons spoke with Mr. Herman. Mr. Herman was informed of the need to obtain a storm water discharge permit and implement a pollution prevention plan. The storm water permit application packet was sent to Mr. Herman at this time.

6. On December 29, 2006, the Department received a complaint in regard to excess waste tire storage by Mr. Herman and raising concerns about storm water pollution.

7. On January 10, 2007, the Department received a complaint in regard to a petroleum smell at the subject site. The complainant was concerned about the possible dumping or spilling of gasoline on the ground.

8. On February 8, 2007, Department Field Office personnel confirmed that Mr. Herman had applied for storm water permit coverage. Permit coverage had not been issued due to uncertainty in regard to whether back fees were owed.

9. On March 1, 2007, General Permit No.1 – Authorization for Storm Water Discharge Associated with Industrial Activity was issued to Mr. Herman.

10. On March 5, 2007, the Department conducted a storm water inspection of the subject site. Mr. Herman's required pollution prevention plan was reviewed and found to be incomplete in at least the following ways: no site map was included, the plan had not

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been reviewed by the employees expected to comply with the plan, the responsible person was not identified, and best management practices to prevent storm water runoff of contamination did not cover all areas of the operation. Evidence that gasoline, oil, and antifreeze had been spilled on the pavement was observed during this inspection. The work area was observed to be in an area on the east side of the property next to an embankment that sloped down to a road ditch. Mr. Herman was advised, through employee Susan Morburg, that contaminated storm water from the work area would be likely to flow down the embankment to the road ditch and into a storm water intake to the northeast. Piled snow on the site was observed to be contaminated with automotive-related liquids and solids. Ms. Morburg was advised to revise the pollution prevention plan and the onsite practices to prevent the discharge of contaminated storm water.

11. On March 13, 2007, the Department received a telephone call from officers of the Iowa Department of Transportation (DOT). The DOT officers were at Mr. Herman's property on unrelated business and called to report that storm water was being drained by a hose into a city storm sewer intake. The Department proceeded to the site. A garden hose was observed to be extending from the northeast corner of Mr. Herman's site down to a city storm sewer intake at the bottom of the embankment at the intersection of South 3rd Street and Sandpiper Court. Inside the storm water intake there was water with a film of old oil and fuel floating on top. The DOT officers reported observing an employee of Mr. Herman remove a radiator hose on a vehicle and drain the antifreeze onto the ground. This discharge was in the area where storm water had ponded and was discharging from the property. Contaminated storm water was observed to be discharging from the site. Several containers of gasoline and several lead-acid batteries were observed to be sitting on the ground, uncovered. Stained pavement was observed along with pools of storm water with a petroleum film on the surface. Mr. Herman was present and was instructed to clean up the contamination in the storm sewer and on his property, store the lead-acid batteries off the ground and in a closed container, clean up contaminated soil and properly dispose of the soil, and to implement the pollution prevention practices identified in the pollution prevention plan.

12. On March 14, 2007, the Department received a complaint alleging that the hose was again being used by Mr. Herman to drain contaminated storm water from the site. Department personnel went to the site. The hose was not in place. The lid of the storm water intake had been removed. Contaminated storm water remained in the sewer and ditch.

13. On March 15, 2007, the Department met with Mr. Herman at the site. All violations had been addressed on that date and the work area had been moved away from the embankment.

14. On March 29, 2007, Mr. Herman submitted a landfill receipt verifying proper disposal of the contaminated soil.

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15. On April 25, 2007, a Notice of Violation was issued to Mr. Herman based upon the violations documented on March 13th and 14th, 2007.

IV. CONCLUSIONS OF LAW

The following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for storm water discharges. The Commission has adopted regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for storm water discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 6 under this definition includes "Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including, but not limited to, those classified as Standard Industrial Classifications 5015 and 5093."

2. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(1) adopts Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director. The above-stated facts disclose a violation of these provisions.

3. General Permit No. 1, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department. The above-stated facts disclose a violation of these provisions.

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V. ORDER

The Department hereby orders that:

1. By March 1, 2008, Mr. Herman shall revise the facility's pollution prevention plan to prevent the further discharge of contaminants;
2. By April 1, 2008, Mr. Herman shall implement the revised pollution prevention plan, and
3. Mr. Herman shall pay an administrative penalty in the amount of \$7,500 within 30 days of the issuance of this Order unless the Order is appealed as provided in Part VII, below.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the stormwater violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC Chapter 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with a penalty. The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Mr. Herman has achieved an economic benefit from his illegal conduct. Costs avoided include additional labor costs to undertake practices designed to avoid the contamination of storm water and labor and disposal costs related to the proper disposal of contaminated soil and storm water. Based upon these considerations, \$1,000 is assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. Failure to comply with the requirements for obtaining a storm water permit and developing and implementing the pollution prevention plan undermines the effectiveness of all water quality regulations and endangers the water supply for surrounding rural residents. Without compliance with a pollution prevention plan, there is an increased risk that contamination from vehicles on the property, including gasoline, waste oil, transmission fluid, antifreeze, and other chemicals will enter the surface waters of the state through storm water discharges. In this case, storm water contaminated with these pollutants was discharged into the storm sewer system. Based on the above considerations and the multiple days of violation, \$4,000 is assessed for this factor.

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c. Culpability. Mr. Herman was informed of the applicable regulations and he eventually obtained storm water permit coverage. However, subsequent to the receipt of the permit and the partial development of the pollution prevention plan, Mr. Herman engaged in practices that led to the discharge of contaminated storm water from the property and into a storm water intake. The lack of an enforcement history and the changes undertaken by Mr. Herman subsequent to March 13, 2007 provide some mitigation in regard to culpability. Based upon the above considerations, \$2,500 is assessed for this factor.

VII. APPEAL

Pursuant to Iowa Code section 455B.175 and 561 IAC 7.5(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of issuance of this Order. The Notice of Appeal should be filed with the Director of the Department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal.

VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code section 455B.191. Compliance with Division "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 5 day of
Feb., 2008

Field Office #5; Jon Tack; I.C.(7)(a); EPA